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PRIVATE RECORD

**IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF UTAH
DAVIS COUNTY, FARMINGTON DEPARTMENT**

LAUREN R. MARSH, Petitioner, vs. KIRK RUSSEL MARSH, Respondent.	MEMORANDUM IN SUPPORT OF MOTION TO BIFURCATE Case No.: 184701031 Judge: Michael Edwards Commissioner: Christina Wilson
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COMES NOW Petitioner by and through her counsel of record, Douglas D. Adair of Adair Law Firm, P.C., and hereby respectfully submits the following Memorandum in Support of Petitioner's Motion to Bifurcate.

RELEVANT FACTS

1. In August of 2017, Respondent entered guilty pleas in federal court to wire fraud, bank fraud, and aggravated identity fraud. (See Court File.)
2. In November 2017, the governing Federal Court sentenced Respondent to 78 months in federal prison. Respondent is currently incarcerated in a federal prison in Cumberland, Maryland. (See Court File.)

3. On or about June 29, 2018, Petitioner filed Verified Petition for Divorce. (See Court File.)

4. On or about September 7, 2018, Petitioner filed her first Motion to Bifurcate.

5. On or about November 19, 2018, the Court conducted a hearing on Petitioner's Motion to Bifurcate and Respondent's Counter Motion for Temporary Orders. At that time, the Court denied Petitioner's Motion to Bifurcate due to the short time the case had been pending, and because the parties had not yet attended mediation. (See Court File.)

6. On or about January 4, 2019, Petitioner filed a Notice of Mediation scheduling mediation for January 28, 2019 with mediator Lisa Jones. This mediation date was mutually agreed to by counsel in advance, (See Court File.)

7. On or about January 28, 2019, Petitioner filed an Amended Notice of Mediation, rescheduling mediation for February 8, 2019. This change was made at the request of Respondent. (See Court File.)

8. Through counsel, Respondent then notified Petitioner that there was a problem with the February 8, 2019 date with Lisa Jones.

9. Accordingly, in lieu of mediation, the parties and counsel conducted a four way meeting that lasted approximately three hours to address the divorce issues. The parties conducted this four-way meeting on January 28, 2019 in Petitioner's counsel's office. Petitioner and her counsel participated personally. Respondent's counsel attended personally, and Respondent participated directly by telephone.

10. This four way meeting fully fulfilled the purpose of mediation. Moreover, after this four way meeting, the parties' attorneys have continued to communicate by the exchange of written settlement proposals and telephone communication to seek to expedite the case. To date, the parties have been unable to reach an agreement.

ARGUMENT

A. Utah law authorizes the Court to grant a Motion to Bifurcate.

Utah law authorizes trial courts to grant motions to bifurcate. The governing Rule provides that "the Court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counter-claim or third party claim, or of any separate issue or any number of claims, cross-claims, counter-claims, third party claims or issues." *See* Utah Rule of Civil Procedure 42(b). Under this standard, the Utah Court of Appeals has indicated that a court should freely grant a motion to bifurcate. *Tobler v. Tobler*, 337 P.3d 296, 299 (Utah Ct. App. 2014) (quoting *Parker v. Parker*, 996 P.2d 565 (Utah Ct. App. 2000)). In this case, the Court should grant Petitioner's Motion to Bifurcate for a host of compelling reasons including those set forth below.

B. Lack of Prejudice to Respondent:

In this case, Respondent will experience no prejudice whatsoever by the bifurcation. For example, this is a low asset case. The parties sold a home and Petitioner is retaining sale proceeds in an account. Also, Respondent is incarcerated so there are no substantial issues at this point regarding Respondent's income and Petitioner is employed.

Moreover, the bifurcation does not in any way affect Respondent's child rights. Therefore, the Court should grant the bifurcation.

C. **Harm to Petitioner:**

1. **Financial Harm to Petitioner:**

Further, it is imperative that the Court grant Petitioner a Bifurcated Decree of Divorce. First, Respondent is the party clearly at fault for these divorce proceedings. Respondent has committed federal felonies and has placed both Petitioner and the three minor children at financial risk. Specifically, Respondent's "bad acts" have caused the minor children a drastic drop in financial circumstances. During the recent marriage, Respondent was the primary bread winner and Petitioner was primarily a stay at home mother and the parties had a good lifestyle through this joint arrangement. Nevertheless, as a result of Respondent's criminal acts, Petitioner is now largely performing the role of both mother and father to the children. In this regard, Petitioner renders the primary care to the minor children. Further, Petitioner also works for the Church of Jesus Christ of Latter Day Saints and provides primary financial support to the minor children. Respondent's parents have paid about \$700.00 per month in support to Petitioner- which Petitioner appreciates and Petitioner also receives some financial assistance from her own parents. However, this support comes nowhere near to the supplementary financial support that the children need. Thus, it is imperative that the Court grant Petitioner's Motion to Bifurcate and allow Petitioner to move forward toward future relationships as she deems appropriate. Certainly, this will only help the children's financial situation.

2. **Emotional Harm:**

A Federal Court has convicted Respondent of federal crimes. As stated above, Petitioner is an innocent financial victim of Respondent's actions in that she has now de facto assumed the role of both mother and father of the children. Beyond this, Petitioner is also an emotional victim of Respondent's crimes. Specifically, Respondent's surprise arrest, Respondent's subsequent criminal legal proceedings, and Respondent's incarceration have been traumatic events for Petitioner. In the face of this, Petitioner has acted responsibly and with resolve to support the minor children and to fairly deal with Respondent. Nevertheless, it has been necessary for Petitioner to obtain ongoing professional counseling to deal with the consequences of Respondent's criminal acts. Accordingly, a bifurcated Decree of Divorce will allow Petitioner to move on toward emotional healing. At this juncture, it appears that Respondent is unnecessarily opposing Petitioner's request to bifurcate. Accordingly, the Court should release Petitioner from this hold, and should grant Petitioner's Motion to Bifurcate.

3. **Extended Length of Separation and Legal Proceedings.**

Notably, the parties have also been separated for an extended period of time. Specifically, the parties separated on July 26, 2017 by Respondent's surprise arrest. Thus, the parties have been separated for over eighteen months and have been embroiled in legal proceedings that began with Respondent's criminal proceedings that have now moved into the parties divorce proceedings. Accordingly, Petitioner asserts that the parties' eighteen months of married separation under these circumstances is long enough. Therefore, the Court should grant Petitioner's Motion for Bifurcated Decree of Divorce.

4. **Simplification of Proceedings:**

Utah Rule of Civil Procedure One authorizes courts to administer cases in a just, inexpensive, and speedy fashion. This case logically breaks down into two basic steps for the parties. First the parties need to be divorced. Petitioner asserts that this will alleviate emotion and tension between the parties and will streamline the other issues for settlement. Second, the parties should then get the remaining issues before the Judge for final disposition.

5. **Waiver or Deferral of Mediation:**

As stated above, Petitioner has already fulfilled mediation by scheduling two mediation sessions through counsel- which Respondent was reportedly not available for. Further, Petitioner then caused her attorney to conduct a four way meeting which certainly accomplished as much as (if not more) than mediation likely would have at this juncture. Accordingly, the Court should waive any further mediation requirement at this juncture in favor of a judicial settlement conference that the Judge can direct once a trial is scheduled.

CONCLUSION

WHEREFORE, Petitioner requests the following relief:

1. That the Court immediately proceed to grant the parties a bifurcated Decree of Divorce.
2. That the Court leave all other issues open for further disposition by the Court.
3. For such other and further relief as the Court deems appropriate under the circumstances.

DATED this 25th day of February, 2019.

/s/ Douglas D. Adair

Douglas D. Adair
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of February, 2019, I served a true and correct copy of the foregoing Memorandum in Support of Motion to Bifurcate upon the following parties, as follows:

D. Michael Nielsen
Attorney for Respondent
505 South Main Street
Bountiful, Utah 84010
VIA COURT ELECTRONIC FILING

/s/ Carren S. Leavitt